

**Nazariah bt Abbas v Badan Peguam Malaysia (Malaysian Bar)
& Ors**

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HIGH COURT (KUALA LUMPUR) — CIVIL CASE
NO WA-22NCvC-110-03 OF 2023
ROZ MAWAR JC
2 SEPTEMBER 2023

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Civil Procedure — Action — Consolidation of actions — Plaintiff sued same defendant in two separate suits premised on similar causes of action — Defendant applied to consolidate suits on ground time and costs would be saved and risk of two inconsistent judgments coming into existence would be avoided if suits were heard together — Whether criteria for consolidation had been fulfilled

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The defendants in the instant High Court suit ('Suit 110') applied under O 4 r 1 of the Rules of Court 2012 to consolidate the suit with another action ('Suit 37') which the plaintiff had filed in the sessions court. The first defendant ('D1') in Suit 110 was also a defendant in Suit 37 together with an individual ('Lee') whom the plaintiff had named in Suit 110 as a claimant who had received compensation from the Bar Council's Compensation Fund for losses he had allegedly suffered at her hands. Prior to the filing of both the suits, the plaintiff, a lawyer, was ordered by the disciplinary board to be struck off the Roll of Advocates and Solicitors ('the Roll'). Subsequently, the second defendant, among other things, advertised in several newspapers and published a circular on D1's website notifying the public of the names of lawyers, including the plaintiff, who had been struck off the Roll and calling on those who had suffered losses at their hands to make a claim for their losses to the compensation fund. In Suit 110, the plaintiff had sought reinstatement to the Roll but D1 had objected to it. The common causes of action the plaintiff had raised in both Suit 110 and Suit 37 included breaches of statutory duty and abuse of power in advertising the fact of her removal from the Roll and compensating persons who had allegedly suffered losses at her hands, defamation, malicious falsehood and conspiracy.

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Held, ordering Suit 110 to be consolidated with Suit 37 and transferring the consolidated action to the sessions court for hearing:

- (1) The court had examined in-depth the pleadings in both Suit 110 and Suit 37 and found that the two suits ought to be consolidated in the interests of justice. There was no necessity to ventilate arguments twice over when they could be judiciously done in one forum. There would be consistent findings on the common facts and inevitably the position of the laws involved (see para 9).

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- A (2) The criteria for consolidation had been fulfilled. The law was established that in the interests of saving time and costs and to avoid two inconsistent judgments from coming into existence, the two matters ought to be consolidated and heard together when the parties were substantially the same and the causes of action arose from the same transaction where the questions of law and the facts were common. The sessions court had the power to deliberate the issues and to grant the reliefs sought by the plaintiff if it was convinced of her case on balance of probabilities (see paras 8 & 17).
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C **[Bahasa Malaysia summary]**

- D Defendan-defendan ('defendan') di dalam saman ini di Mahkamah Tinggi ('Saman 110') memohon di bawah A 4 k 1 Kaedah-Kaedah Mahkamah 2012 untuk menggabungkan saman itu dengan satu lagi tindakan ('Saman 37') yang telah difailkan oleh plaintif di mahkamah sesyen. Defendan pertama ('D1') di dalam Saman 110 juga merupakan defendan di dalam Saman 37 bersama seorang individu ('Lee') yang dinamakan oleh plaintif di dalam Saman 110 sebagai penuntut yang telah menerima pampasan daripada Kumpulan Wang Pampasan Majlis Peguam atas kerugian yang di alami akibat tindakannya.
- E Sebelum pemfailan kedua-dua saman itu, plaintif, seorang peguam, telah diarahkan oleh lembaga tata tertib untuk dilucutkan daripada Senarai Daftar Peguambela dan Peguamcara ('Senarai Daftar'). Seterusnya, defendan kedua, antara lain, mengiklankan di beberapa akhbar dan menerbitkan pekeliling di laman web D1 yang memaklumkan kepada orang ramai mengenai nama-nama
- F peguam, termasuk plaintif, yang telah dikeluarkan dari Senarai Daftar dan memanggil mereka yang telah mengalami kerugian akibat tindakan mereka untuk membuat tuntutan kerugian kepada kumpulan wang pampasan. Dalam Saman 110, plaintif telah memohon namanya didaftarkan semula ke Senarai Daftar namun terdapat bantahan daripada D1. Kausa tindakan yang utama yang dituntut oleh plaintif di dalam kedua-dua Saman 110 dan Saman 37 termasuklah pelanggaran tugas statutori dan penyalahgunaan kuasa ketika mengiklankan fakta-fakta mengenai pelucutan namanya dari Senarai Daftar dan membayar ganti rugi kepada orang yang dikatakan mengalami kerugian akibat tindakannya, fitnah, kepalsuan berniat jahat dan konspirasi.
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- H **Diputuskan,** memerintahkan Saman 110 digabungkan dengan Saman 37 dan memindahkan tindakan yang telah digabungkan ke mahkamah sesyen untuk pendengaran:

- I (1) Mahkamah telah meneliti pliding-pliding secara mendalam di dalam Saman 110 dan Saman 37 dan mendapati bahawa kedua-dua saman tersebut sepatutnya digabungkan demi kepentingan keadilan. Tiada keperluan untuk membuat penghakiman yang berasingan berulang kali ketika ianya boleh dilakukan di dalam forum yang sama. Dapatan yang sama akan diperoleh di dalam fakta yang sama dan juga kedudukan

undang-undangnya (lihat perenggan 9).

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- (2) Kriteria untuk penggabungan telah dipenuhi. Undang-undang telah menetapkan bahawa untuk menjimatkan masa dan kos dan mengelakkan penghakiman yang tidak konsisten, kedua-dua tindakan tersebut seharusnya digabungkan dan didengar bersama apabila pihak-pihak secara umumnya adalah sama dan kausa-kausa tindakan bermula dari transaksi yang sama apabila isu-isu fakta dan undang-undang adalah serupa. Mahkamah sesyen mempunyai kuasa untuk meneliti isu-isu tersebut dan memberikan relif yang dipohon oleh plaintif sekiranya berjaya membuktikan kesnya melebihi imbalan kebarangkalian (lihat perenggan 8 & 17).]

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Cases referred to

Baring Futures (Singapore) Pte Ltd (in liquidation) v Deloitte & Touche (a firm) & Anor [1997] 3 SLR 312, HC (refd)

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Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid [1979] 2 MLJ 244; [1979] 1 LNS 9, FC (refd)

Hap Seng Plantations (River Estates) Sdn Bhd v Excess Interpoint Sdn Bhd & Anor [2016] 3 MLJ 553; [2016] 4 CLJ 641, FC (distd)

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Hiwood United Sdn Bhd v All Season Realty Sdn Bhd & Ors [2018] MLJU 735; [2018] 1 LNS 743, HC (refd)

Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd [2018] MLJU 1151; [2019] 6 CLJ 292, CA (refd)

Kumpulan Emas Bhd v Dato' Lim Teng Lew & Anor [2004] 2 MLJ 614; [2004] 1 LNS 77, HC (refd)

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MCAT Gen Sdn Bhd v Celcom (Malaysia) Bhd [2007] 8 MLJ 277; [2007] 10 CLJ 356, HC (refd)

MTD Capital Bhd v Tan Sri Dr Azmil Khalili bin Khalid [2020] 8 MLJ 252; [2020] 2 CLJ 677, HC (refd)

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Sykt Multi Wood v Foosan Timber Industries Sdn Bhd & Anor [1992] 3 CLJ Rep 623, HC (refd)

Legislation referred to

Federal Constitution arts 5(1), 8(1)

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Legal Profession Act 1976 ss 3, 18, 88(2), 103E, 107, Schedule

Rules of Court 2012 O 4 r 1, O 57

Subordinate Courts Act 1948 s 65

The plaintiff acting in person.

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Aida Faralyana bt Azlan (with Hoi Jack S'ng) (Lee Hishammuddin Allen & Gledhill) for the defendants.

A Roz Mawar JC:

B [1] On 24 August 2023, this court heard the defendants' application to consolidate this suit together with the Civil Suit No WA-B53F-37-11 of 2022 at the Kuala Lumpur Sessions Court ('Suit 37'). This court had considered the submissions of all parties. The plaintiff was not legally represented but she was given the opportunity to present her arguments. Premised on the facts of the case and the relevant applicable laws, this court ordered for this suit to be consolidated with Suit 37. The defendants' application under encl 12 was allowed and this court also granted the following orders:

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- (a) that the intitulement of Suit 37 reflects the addition of this suit;
 - (b) that the consolidated suits are to commence as one proceeding in Suit 37;
 - (c) the consolidated suits be heard together, or in the alternative one after the other subject to the trial judge's discretion; and
 - (d) costs be in the cause.
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E [2] In summary, the plaintiff's over 101-page statement of claim in this suit pleaded that the defendants had acted in bad faith, ultra vires and breach of statutory duties pertaining to her being struck off the roll of advocates and solicitors ('the Roll') and their actions pursuant thereto. Those actions included the passing of a resolution and circular, the advertisements and decisions made regarding complaints of losses suffered by complainants and the payments of compensation sums from the Bar Council Compensation Fund ('compensation fund') to the claimants who had suffered losses. She had also claimed that the defendants had conspired against her and abused their powers to strike her and her firm off the Roll. She claimed she suffered breaches of natural justice and rights of law at the hands of the defendants. She claimed she was defamed and there was malicious falsehood on the part of the defendants. The plaintiff seeks the court's declaration that all the steps and actions taken by the defendants were ultra vires, null and void. The prayers for the court's declaration, amongst others, included those that the first and second defendants had contravened her constitutional rights under arts 5(1) and 8(1) of the Federal Constitution that guaranteed her right to life and personal liberty, and also her right to carry on any trade, business, profession, vocation or employment, respectively. Also, she sought for the payment of damages.

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I [3] The plaintiff had also filed Suit 37 at the Sessions Court Kuala Lumpur against the first defendant and one Lee Piek Boon (one of the claimants the plaintiff cited in this suit that were compensated). The reliefs prayed for in that suit mirrored and overlapped some of those prayed for in this suit. This court thus, had allowed the defendants' application to consolidate this suit with Suit

37. Following the order granted, this suit will be heard before the Kuala Lumpur Sessions Court.

[4] The plaintiff dissatisfied with the order of consolidation granted by this court, had lodged an appeal to the Court of Appeal. Her notice of appeal stated that her appeal is against this court's decision that:

- (1) Persoalan undang-undang dalam Seksyen 57(j) Akta Profesion Undang-Undang 1976 (APU 1976) yang menyatakan adalah kuasa tertentu Majlis Peguam memulakan, menjalankan, membela, mengkompaun dan meninggalkan apa-apa prosiding undang-undang oleh atau terhadap Badan Peguam Malaysia ADALAH TIDAK TERPAKAI dalam Lampiran 12 dan Lampiran 13 di mana deponen (Anan Raj a/l R Balasupramaniam) mengikrar sebagai Setiausaha Kehormat terkini Badan Peguam Malaysia bagi pihak Majlis Peguam yang mana sebenarnya deponen tidak ada locus standi;
- (2) Persoalan undang-undang iaitu status deponen yang tidak ada locus standi dalam Lampiran 13 adalah sah dan tidak ultra vires dalam seksyen 57(j) APU 1976 dan tidak ultra vires seksyen 76(1) APU 1976;
- (3) Guaman sivil dalam bidangkuasa Mahkamah Tinggi Kuala Lumpur No WA-22NCvC-110-03/2023 (Guaman 110) disatukan dengan guaman sivil dalam bidang kuasa Mahkamah Sesyen Kuala Lumpur No WA-B53F-37-11/2022 (Guaman 37) di bawah Aturan 4 Kaedah 1 KM 2012;
- (4) Persoalan undang-undang dalam Seksyen 3 APU 1976 di mana perkataan 'Mahkamah' ertinya Mahkamah Tinggi atau seorang Hakim Mahkamah Tinggi apabila bersidang dalam Mahkamah terbuka dan 'Hakim' ertinya Hakim Mahkamah Tinggi yang bersidang dalam Kamar ADALAH TIDAK TERPAKAI sebagai bidangkuasa asal (original jurisdiction) Guaman 110;
- (5) Persoalan undang-undang dalam Perkara 160(2) dan Perkara 152(1) Perlembagaan Persekutuan ADALAH TIDAK TERPAKAI dalam Lampiran 12 dan Lampiran 13.

THE SALIENT FACTS

[5] This court was persuaded by the defendants to look into the undisputed facts that were applicable to both this suit ('Suit 110') and Suit 37. The salient facts are as follows:

- (a) on 25 July 2015 pursuant to an order of the disciplinary board, the plaintiff was struck off the Roll of Advocates and Solicitors ('the Roll');
- (b) subsequently, the second defendant issued a resolution on 16 January 2018 that appointed Rozana Meli Abdullah to intervene in the plaintiff's firm pursuant to s 88(2) read together with the Schedule of

- A the Legal Profession Act 1976 ('the LPA');
- (c) the second defendant had issued a notice under the Schedule of the LPA on 18 February 2018;
- B (d) the second defendant had advertised in various newspapers the removal of the plaintiff's name from the Roll;
- (e) published Circular No 095/2016 ('circular') on the first defendant's website regarding the removal of the plaintiff's name from the Roll;
- C (f) through the circular and advertisements, the second defendant gave notice to the public to make a claim to the compensation fund if they had suffered any loss due to the dishonesty of those struck off the Roll including the plaintiff;
- D (g) the first defendant granted various persons' claims that the second defendant had found to have suffered losses due to the plaintiff that included the second defendant in Suit 37; and
- (h) the plaintiff had applied for her name to be reinstated in the Roll which the second defendant in this suit had objected to on various grounds that included the failure of the plaintiff to yet make restitution to the compensation fund.
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[6] The causes of action in this suit and Suit 37 echo one another. Amongst others, the plaintiff claims against the defendants of both suits the following:

- F (a) breach of statutory duty and abuse of powers relating to the issuance of the same resolution;
- (b) breach of statutory duty and abuse of powers relating to the same advertisements in the newspapers;
- G (c) breach of statutory duty, breach of trusts and abuse of powers relating to the payments out of the compensation fund (the same payment in Suit 37 was also pleaded in this suit);
- H (d) defamation and malicious falsehood relating to the same notice, advertisements and circular; and
- (e) conspiracy.

I [7] The defendants based their application for consolidation on O 4 r 1 of the Rules of Court 2012 ('RoC') that provided:

- (1) Where two or more causes or matters are pending, and it appears to the Court that:
 - (a) Some common question of law or fact arises in both or all of them;

(b) The rights to relief claimed herein are in respect of or arise out of the same transaction or series of transactions; or

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(c) For some other reason it is desirable to make an order under this rule,

The Court may order the causes or matters to be consolidated on such terms as it thinks just or may order the causes or matters to be tried at the same time or one immediately after another or may order any of the causes or matters to be stayed until the determination of any of other of the causes or matters.

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[8] The Federal Court held in *Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244; [1979] 1 LNS 9, that matters ought to be consolidated when parties were the same and the causes of action arose from the same transaction where the question of law and fact were common between them. At p 251 of the judgment it was held:

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The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is 'some common question of law or fact bearing sufficient importance in proportion to the rest' of the subject matter of the actions 'to render it desirable that the whole should be disposed of at the same time' (*Payne v British Time Recorder Co* [1921] 2 KB 16, *Horwood v British Statesmen Publishing Co Ltd* [1929] WN 38, *Daws v Daily Sketch* [1960] 1 All ER 397). Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same.

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We may add that in such circumstances, one of the tests in deciding whether consolidation should be ordered is to determine whether two inconsistent judgments will come into existence if it is not ordered.

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[9] This court had examined in depth the pleadings of both suits and found that this suit (Suit 110) and Suit 37 ought to be consolidated in the interests of justice. There was no necessity to ventilate arguments twice when they can be judiciously done in one forum. There will be consistent findings of the common facts and inevitably the positions of the laws involved. See *MCAT Gen Sdn Bhd v Celcom (Malaysia) Bhd* [2007] 8 MLJ 277; [2007] 10 CLJ 356, *Baring Futures (Singapore) Pte Ltd (in liquidation) v Deloitte & Touche (a firm) & Anor* [1997] 3 SLR 312 and *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd* [2018] MLJU 1151; [2019] 6 CLJ 292.

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[10] The plaintiff was given the opportunity to present her objections to the consolidation application filed by the defendants (encl 12). She had complained that the defendant's application under O 4 r 1 of the RoC was flawed, defective and unenforceable in law. So too was the affidavit in support for the application as the post of 'Setiausaha Kehormat' is not recognised in law as an officer under the LPA. The other reasons for her objection to the defendants' application for consolidation of suits were that there was no agreement on common representation by a single legal firm and that there was

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A a counterclaim in Suit 37 that was not disclosed in the application nor the affidavit in support thereto. The plaintiff had also repeatedly iterated that only the High Court can try this suit where she cited s 3 of the LPA:

B 'Court' means the High Court or a Judge thereof when sitting in open Court, and 'Judge' means a Judge at the High Court sitting in Chambers.

C [11] To that last contention, this court finds the argument misplaced and misconceived. This suit was not filed pursuant to the LPA. It is not a petition for admission under s 18 of the LPA or for restoration to the Roll under s 107 of the LPA. Neither is this suit an appeal against an order of the disciplinary board under s 103E of the LPA. Therefore, it is not correct to state that only this court as the High Court has jurisdiction to hear this suit. The causes of action in this suit and the reliefs prayed for can be tried before the sessions court where Suit 37 was filed. See s 65 of the Subordinate Courts Act 1948.

D [12] The arguments on the common representation by a single law firm did not apply. The cases relied on pointed out a common representation of the plaintiff as the basis for consolidation (see *Kumpulan Emas Bhd v Dato' Lim Teng Lew & Anor* [2004] 2 MLJ 614; [2004] 1 LNS 77, *Hiwood United Sdn Bhd v All Season Realty Sdn Bhd & Ors* [2018] MLJU 735; [2018] 1 LNS 743).
E The plaintiff is acting in person for both suits — Suit 110 and Suit 37. So, the issue of common representation did not arise. This court additionally took note that the defendants in this suit were legally represented by the same firm as that for the first defendant in Suit 37.

F [13] As to whether there was disclosure of a counterclaim in Suit 37 did not change any circumstances in the consideration for an order to consolidate this suit with Suit 37. They arose out of the same series of transactions and not a cross-action (see *Sykt Multi Wood v Foosan Timber Industries Sdn Bhd & Anor* [1992] 3 CLJ Rep 623).
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H [14] Pertaining to the plaintiff's contention that the 'Setiausaha Kehormat' did not have any locus to affirm the affidavit in support of the defendants' application, at the hearing of the arguments this court had pointed out to the plaintiff that her translation of the post may be in error. This court understood that the post was the Honourable Secretary and not the Honorary Secretary. The plaintiff's argument on this point was in error, based on the wrong interpretation of the post. In any event, it is public knowledge that the deponent held the post of secretary of the first defendant.
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[15] The issues on the questions of locus standi, breaches of statutes and our Federal Constitution were to be tried and deliberated at the trial prope. Not at this stage where the application was to consolidate the suits. It is not for this court at this moment to adjudicate whether the plaintiff's constitutional rights

were breached by the alleged mala fide actions of the defendants as contested by her. The plaintiff was advised to hire a legal counsel to better advance her case and for better objective legal advice on the proceedings.

[16] The consequence of this court's order in allowing the defendants' application is that this suit (Suit 110) once consolidated with Suit 37 will be transferred and heard before the sessions court. There is no necessity to make an application under O 57 of the RoC. See *Jaya Sudhir a/l Jayaram* that held it was the natural consequence of the consolidation order. Also, see *MTD Capital Bhd v Tan Sri Dr Azmil Khalili bin Khalid* [2020] 8 MLJ 252; [2020] 2 CLJ 677. The case of *Hap Seng Plantations (River Estates) Sdn Bhd v Excess Interpoint Sdn Bhd & Anor* [2016] 3 MLJ 553; [2016] 4 CLJ 641 is distinguishable as that concerned the powers to transfer a case from the High Court of Malaya to the High Court of Sabah and Sarawak.

[17] This court concluded that the criteria for consolidation of this application had been fulfilled. The sessions court has the power to deliberate the issues and grant the reliefs sought for by the plaintiff should it be convinced on a balance of probabilities of her case. Thus, the application to consolidate this suit (Suit 110) and Suit 37 was allowed. This suit was to be transferred to the sessions court. This court left it to the discretion of the sessions court on whether to hear them together simultaneously or one after the other. This court further ordered costs to be in the cause.

Suit 110 ordered to be consolidated with Suit 37 and the consolidated action to be transferred to the sessions court for hearing.

Reported by Ashok Kumar

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